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In re: WICK(AM), Scranton, PA
Facil. ID No. 36489
File No. BAL-20050707AAU

WYCK(AM), Plains, PA
Facil. ID No. 36835
File No. BAL-20050707AAP

WWRR(FM), Scranton, PA
Facil. ID No. 36508
File No. BALH-20050707AAT

**Applications for Assignment of License
Petition for Reconsideration**

Dear Counsel:

This letter concerns the captioned applications of Lancom, Inc. ("Lancom"), Lane Broadcasting Corporation ("LBC"), LB Radio Corporation ("LB") and Bold Gold Media Group ("BGMG") (collectively, the "Parties") for consent to assign to BGMG the licenses for Stations WICK(AM),

Scranton, Pennsylvania, by Lancom; WYCK(AM), Plains, Pennsylvania, by LB; and WWRR(FM), Scranton, Pennsylvania, by LBC (collectively, the “Applications” and each, an “Application”).¹ The Applications were granted by the Audio Division of the Media Bureau (the “Bureau”) by letter dated December 9, 2005.² On January 9, 2006, Leslie C. Quick III (“Quick”) filed a Petition for Reconsideration (the “Petition”) of the Staff Decision.³ For the reasons set forth below, we dismiss the Petition.

Background. Douglas V. Lane (“Lane”) was the 80 percent shareholder of Lancom and LBC and the sole shareholder of LB (Lancom, LBC and LB, collectively, the “Sellers”). In March 2005, he was convicted in Lackawanna County, Pennsylvania, of several felony counts involving child molestation and child pornography. Lane was sentenced to a prison term in October 2005 and is currently incarcerated. He is appealing his convictions and sentence. On July 7, 2005, the Parties filed the Applications. Under the terms of the Parties’ Asset Purchase Agreement (the “APA”), as consideration for the Stations, BGMG agreed to pay the Sellers \$1.925 million, less the total amount of any pre-closing loans made by BGMG to Sellers for the operation of the Stations. The sale proceeds would be used to pay all taxes due and to satisfy all liabilities relating to the Stations’ assets. The proceeds also would be used to pay all valid and reasonably documented claims of Sellers’ creditors and to fund a \$100,000 post-closing escrow for potential Sellers’ liabilities relating to the Stations. Additionally, a non-refundable \$300,000 payment would be made from the proceeds to the Lackawanna County General Fund (the “LCGF”) at closing, for distribution to Lane’s victims and to local agencies that assist abused children.⁴ Under the APA, no payment would be made – directly or indirectly – to any shareholder of Sellers, including Quick, unless Lane was exonerated of all felony charges. Any remaining proceeds would be placed in a post-closing trust. If any felony conviction of Lane was sustained in a final determination, all funds remaining in the post-closing trust would be distributed to the LCGF.

On December 9, 2005, the Bureau granted the Applications, including that involving Station WICK(AM). The Staff Decision explained that, while the Commission’s *Jefferson Radio*⁵ policy generally precludes consideration of a license assignment application where a character issue has been resolved or is pending against the proposed assignor, the public interest benefits that would accrue from consummation of the proposed transaction here warranted variance from that approach. In this case, those public interest benefits included: (1) substantial payments to victims of Lane’s conduct and to

¹ Stations WICK(AM), WYCK(AM) and WWRR(FM) are collectively referred to herein as the “Stations.”

² See *Letter to Charles R. Naftalin, Esquire and Robert Lewis Thompson, Esquire*, 20 FCC Rcd 19373 (MB 2005) (the “Staff Decision”).

³ Lancom, BGMG and the District Attorney for Lackawanna County, Pennsylvania (the “District Attorney”), filed a “Joint Opposition to Petition for Reconsideration and Request for Other Relief” (the “Joint Opposition”) on January 24, 2006, to which Quick replied on February 3, 2006, by “Reply to Joint Opposition to Petition for Reconsideration and Request for Other Relief” (the “Reply”).

⁴ A separate agreement, dated October 7, 2005, between Lane and the District Attorney, who was the prosecuting attorney at the Lane criminal trial, sets forth the distribution plan for funds paid into the LCGF. The non-refundable \$300,000 payment would be disbursed to victims of Lane and to Lackawanna County non-profit agencies that assist abused children. The residual distribution from the post-closing trust to the LCGF would be disbursed in a manner directed by the District Attorney.

⁵ See *Jefferson Radio Corp. v. FCC*, 340 F.2d 781 (D.C. Cir. 1964).

designated social service agencies; (2) no payments or other direct benefits to any shareholder of the Sellers from the sale; (3) Lane's full withdrawal from broadcasting; and; (4) the continuation of radio service by the Stations to listeners in the Scranton area.⁶

In his Petition, Quick argues that the Staff Decision took away his rights as a minority (20 percent) shareholder of Lancom, interfered with those rights under state law, and extinguished his economic interest without benefit of due process. Quick contends that, in depriving him of any sale proceeds, he is being punished "for the sins of another" and that this taking the proceeds for his investment in Lancom constitutes an unlawful seizure of his property. Accordingly, he asks that the Bureau "reconsider its decision and clarify that Mr. Quick must receive an equitable portion of the proceeds of the sale of WICK(FM)." ⁷

In their Joint Opposition, Lancom, BGMG and the District Attorney argue that Section 1.106(b) of the Commission's rules⁸ required Quick to demonstrate in his Petition both the manner in which his interests were adversely affected by grant of the Applications and good reason why it was not possible for him to have participated in the earlier stages of the proceeding involving those Applications. The Joint Opposition states that, because Quick did not make this latter showing, his Petition should be dismissed. Additionally, the Joint Opposition contends that the Petition is an abuse of the Commission's processes because it: (1) fails to comply with Section 1.106(b)(1) of the Commission's rules; (2) is premised on civil law claims outside the Commission's jurisdiction; and (3) opposes each of the Applications although Quick only had an interest in one of the Sellers, Lancom. Finally, the Joint Opposition asserts that Quick's claims, as stated in the Petition, each revolve around state corporate law and involve his rights as a minority shareholder under those laws and, accordingly, are beyond the Commission's jurisdiction.

In his Reply, Quick states that, under the initial version of the APA, he, as an innocent minority shareholder in Lancom, would have recouped his investment in Lancom from the proceeds of the sale of Station WICK(AM). For this reason, he claims that he did not object to the WICK(AM) Application at the petition to deny stage because he supported the sale under those conditions. The revision of the proposal to preclude Quick's receipt of any of the sale proceeds, was, he contends, not known or even agreed to by the Parties until October 2005, long after the 30-day post-public notice period for the filing of petitions to deny had passed. Therefore, he asserts, he had no reason to file a petition to deny, and his instant Petition is appropriate because it alleges material error in the Staff Decision. Moreover, he asserts that he received no notice "directly from the company" that the Applications would be amended to forbid payments to innocent shareholders of the Sellers.⁹ Additionally, Quick maintains that he does not seek to involve the Commission in issues of state law but, instead, that the Staff Decision overstepped the Commission's authority by resolving private contractual issues when it conditioned the assignment of the WICK(AM) license on the elimination of his minority shareholder rights in Lancom.

⁶ *Staff Decision*, 20 FCC Rcd at 19375.

⁷ Petition at 7.

⁸ 47 C.F.R. § 1.106(b).

⁹ Quick acknowledges that while his counsel discussed the status of the proceeding with Lancom's counsel "from time to time," he received no information that the Application was to be so amended "until well after the Petition to Deny date." Reply at 5.

Discussion. As an initial matter, Quick has not adequately demonstrated why he did not participate earlier in the proceeding – a prerequisite to our substantive consideration of his instant Petition. Section 405(a) of the Communications Act of 1934, as amended, provides that a petition for reconsideration may be filed by: (1) a party to a proceeding, or (2) “any other person aggrieved or whose interests are adversely affected by” the underlying decision.¹⁰ Although Quick is not a party to this proceeding because he failed to file a petition to deny or otherwise object to the Applications, he may petition for reconsideration under the second, “aggrieved or adversely affected” test, if he can demonstrate why it was not possible for him to have participated earlier.¹¹ Although Quick could not have filed a petition to deny after the 30-day filing period had expired with regard to the amendment which extinguished his right to share in the sale proceeds as a result of his interest in Lancom, he could have filed an informal objection.¹² The Commission has previously determined that, where a petitioner is precluded from filing a petition to deny, its submission of an informal objection is sufficient to confer standing to file a reconsideration petition.¹³ Where, however, such a potential participant could have, but did not, file an informal objection, the Commission has found that it lacks standing to then file a reconsideration petition.¹⁴ Accordingly, Quick has not met the burden imposed by Section 1.106(b)(1) of the Commission’s rules of demonstrating why he could not have participated earlier by means of filing an informal objection. Accordingly, we decline to consider the merits of his Petition.¹⁵

Even if we were to consider Quick’s substantive arguments, they are without merit. The Application to assign the WICK(AM) license from Lancom to BGMG, and the amendment thereto, were each duly executed by Virginia B. Lane, an authorized Lancom officer and director acting within her legal authority to bind the company. Contrary to Quick’s contention that the Bureau was somehow complicit in the inclusion in the terms of the sale that no shareholder of the Sellers, including Quick,

¹⁰ 47 U.S.C. § 405(a); *see also* 47 C.F.R. § 1.106(b)(1).

¹¹ *See* 47 C.F.R. § 1.106(b)(1).

¹² *See* 47 C.F.R. § 73.3587.

¹³ *See Cloud Nine Broadcasting, Inc.*, Letter, 10 FCC Rcd 11555, 11556 (1995).

¹⁴ *See Davidson County Broadcasting Co., Inc.*, Memorandum Opinion and Order, 8 FCC Rcd 1689, 1690 (1993).

¹⁵ We do not find Quick’s filing of his Petition to constitute an abuse of the Commission’s processes, as claimed in the Joint Opposition. The Commission has defined “abuse of process” as “serious willful misconduct that directly threatens the integrity of the Commission’s licensing processes.” *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179, 1211 (1986). Contrary to the assertions in the Joint Opposition, Quick’s Petition, while not subject to our consideration for the above-stated reasons, does not “flout the Commission’s procedures” simply because we concluded that his arguments are unavailing. Additionally, we do not find that Quick abused the Commission’s processes by seeking reconsideration of the grant of the Applications for approval of the sale of all three Stations by companies that Lane controlled. It is not altogether clear from the pleadings that Quick objected to the other two Applications- his requested remedy was that the Bureau revise its disposition and restore his rights as a Lancom shareholder. Moreover, although Quick only had an interest in one of the Sellers, he is seeking to be compensated from his interest in Lancom from the consolidated proceeds of the challenged transactions. Finally, while the Joint Opposition claims that Quick’s Petition raises matters such as his rights under state law (Joint Opposition at 11), we do not find that his doing so constituted deliberate misconduct or threatened the integrity of the Commission’s licensing processes. In sum, the Joint Opposition does not demonstrate, and we do not find, that Quick’s filing of the Petition constitutes an abuse of process.

would receive proceeds from the transaction as long as Lane's conviction stood,¹⁶ the Bureau only approved what had been negotiated and proposed by the Parties before it in Applications to which no one, including Quick, had filed an opposition. For the reasons noted in the Staff Decision and above, the Bureau, in the exercise of its delegated statutory authority and in its sound discretion, determined that its grant of the Applications and approval of the proposed sale of the Stations would serve the public interest. Quick has not demonstrated that the Bureau acted outside that authority or otherwise abused its discretion in so granting the Applications. If Quick believes that any of the Parties somehow violated his rights as a Lancom shareholder, his remedy is before a state court, which is the appropriate forum to resolve the contract, corporate law, and minority shareholder rights claims that he raises in his Petition.¹⁷ The Commission has consistently left to local courts of appropriate jurisdiction the consideration and resolution of disputes regarding such issues.¹⁸ Accordingly, it has generally declined to consider issues of a licensee's compliance with the requirements of state corporate law where, as here, no challenge has been made before a state court.¹⁹

Conclusion/Actions. In his Petition, Quick fails to demonstrate why he could not have earlier participated in the Bureau's consideration of the Applications for approval of the assignment of Stations WICK(AM), WWRR(FM), and WYCK(AM), or any material error in the Staff Decision granting those Applications.

Accordingly, for the reasons set forth above, Quick's Petition for Reconsideration IS DISMISSED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

¹⁶ Petition at 3 ("In essence, the Media Bureau has extinguished all of the rights of Mr. Quick as a shareholder under corporate law, without involving Mr. Quick in the process in any way.")

¹⁷ Contrary to Quick's claim, the Staff Decision did not adjudicate a contractual dispute or private claim, or actively usurp his private shareholder rights. (Reply to Joint Opposition at 5.) The Bureau's action made no ruling on or interpretation of Pennsylvania state contract or corporate law. As noted above, the Bureau merely granted the Applications and approved the transaction negotiated by and presented by the Parties.

¹⁸ See *Northwest Broadcasting, Inc.*, Memorandum Opinion and Order, 12 FCC Rcd 3289, 3293 (1997); see also *John F. Runner*, Memorandum Opinion and Order, 36 RR 2d 773 (1976) and *Transcontinental Television Corp.*, Memorandum Opinion and Order, 21 RR 945 (1961).

¹⁹ *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18544 (1999); see also *North American Broadcasting Co., Inc.*, Memorandum Opinion and Order, 15 FCC 2d 979, 983 (1969) ("With regard to the status of any previous corporate action, the Commission has traditionally declined to interfere in questions of alleged State law violations where no challenge has been made in the State courts and the determination is one that is more appropriately a matter of State resolution.").